

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

C.R.P. No. 4334 of 2014

ORDER:

This Civil Revision Petition is filed under Article 227 of the Constitution of India challenging the order dt.09.09.2014 in I.A.No.1058 of 2012 in O.S.No.266 of 2012 of the I Additional Junior Civil Judge, Nellore.

2. Petitioner herein is plaintiff in the said suit. He filed the suit against the 1st respondent contending that the 1st respondent is his tenant and sought the latter's eviction on the ground that he terminated the tenancy by issuing legal notice under Section 106 of the Transfer of Property Act, 1882. He also sought damages for use and occupation of the subject premises.

3. Written Statement was filed by the 1st respondent denying the title of the petitioner to the plaint schedule property and also denying existence of landlord and tenant relationship between himself and the petitioner.

4. While the suit was pending, the 2nd respondent herein filed I.A.No.1058 of 2012 under Order 1 Rule 10 of Civil Procedure Code, 1908 to implead her as a party to the suit. In that application, she contended that title to the property originally belonged to somebody else and not to the petitioner and that she is the present absolute owner of the plaint schedule property. She claimed that she is having direct interest in the plaint schedule property and therefore, she is a proper and necessary party to the suit. She contended that 1st respondent is not entitled to file the suit.

5. The said application was opposed by the petitioner by filing a counter. Petitioner contended that the suit being one for eviction of the 1st respondent, the 2nd respondent, who is claiming a right in respect of the plaint schedule property, is not a necessary party to the suit. The title of the 2nd respondent was also disputed. It is further contended that the 2nd respondent should file a separate suit for determination of her right and interest over the plaint schedule property and cannot seek adjudication of the said issues in the present suit.

6. By order dt.09.09.2014, the Court below allowed the I.A.No.1058 of 2010. It held that although the suit is filed by the petitioner against the 1st respondent seeking eviction and for damages, the 2nd respondent/proposed party had claimed ownership of the plaint schedule property and also disputed the tenancy of the 1st respondent, and therefore, the question whether the 1st respondent is in occupation of the plaint schedule property is also to be gone into and the involvement of the 2nd respondent would assist the Court in arriving at a just conclusion and to avoid multiplicity of the proceedings.

7. Challenging the same, this Revision is filed.

8. Counsel for the petitioner contended that the Court below erred in allowing the I.A.No.1058 of 2010 and that the question whether the petitioner is the owner of the plaint schedule property or not is not a question which would arise for consideration in the present suit and the only question to be decided is about the existence of the relationship of landlord and tenant between the petitioner and the 1st respondent; and assuming for the sake of

argument that ownership was not with the petitioner, even then he can still be the landlord of the 1st respondent and is entitled to maintain the suit for eviction.

9. Counsel for the respondent refuted the above said contentions and contended that the Court below has rightly allowed the I.A.No.1058 of 2012, particularly, since the documents filed by the 2nd respondent establishes that she has an interest in the plaint schedule property.

10. I have noted the submissions of both sides.

11. The suit has been filed by the petitioner against the 1st respondent for eviction alleging that the petitioner is the landlord of the 1st respondent that there is relationship of landlord and tenant between them and that the said tenancy has been validly terminated by a legal notice issued under Section 106 of the Transfer of Property Act, 1882. No doubt, the title of the petitioner to the plaint schedule property was disputed by the 1st respondent. Notwithstanding the same, the question to be considered in such a suit would be whether there exists the relationship of landlord and tenant between the petitioner and the 1st respondent. Title to the property in question is irrelevant.

(See ***Sriram Pasricha v. Jagannath & Ors***^[1] and ***Singh v. Asharfi Lal***^[2]). It is an issue which is extraneous to the suit. Merely because the respondents question the title of the petitioner in respect of the plaint schedule property, the said issue cannot be decided in this suit. Therefore, if the 2nd respondent had any right, title or interest in the plaint schedule property, she

has to file a separate suit and get her title adjudicated, but she cannot seek for getting impleaded in the suit and insist that the trial Court determine her title over the property vis-à-vis with the petitioner. If this is permitted, it would change the character of the suit and convert it into a suit for determination of title to the property from a suit for eviction by a landlord against a tenant. Therefore, I am of the opinion that the order passed by the Court below cannot be sustained.

12. For the aforesaid reasons, the Civil Revision Petition is allowed and the order dt.09.09.2014 in I.A.No.1058 of 2012 in O.S.No.266 of 2012 of the I Additional Junior Civil Judge, Nellore is set aside. There shall be no order as to costs.

13. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

02nd July, 2015.
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[\[1\]](#) 1976(4) SCC 184

[\[2\]](#) 1995(6) SCC 580